IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 258 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME-TAX

Versus

ABS PLASTICS LTD.

Appearance:

1. INCOME TAX REFERENCE No. 258 of 1992
MR MANISH R BHATT for Petitioner No. 1
NOTICE SERVED for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/02/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue under Section 256(1) of the Income-tax Act, 1961, the following question of law has been referred for our

opinion for assessment year 1984-85 :-

"Whether the Appellate Tribunal was right in law and on facts in directing the ITO not to allow depreciation to the assessee on the sole ground that the assessee was not interested in claiming the same in the present assessment year ?"

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention has been invited to the decision of the Apex Court in CIT vs. Mahendra Mills, (2000) 243 ITR 56, wherein the Apex Court held that the language of the provisions of Sections 32 and 34 is specific and admits of no ambiguity. The provision for claim of depreciation is certainly for the benefit of the assessee. If he does not wish to avail that benefit for some reason, benefit cannot be forced upon him. It is for the assessee to see if the claim of depreciation is to his advantage.

4. Applying the ratio of the aforesaid decision, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

The reference accordingly stands disposed of.

(M.S. Shah, J.)

(M.C. Patel, J.)

sundar/-